

JD #17002
MBJ



August 13, 1992

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Via Certified Mail-Return
Receipt Requested #P 559 444 411
The Hon. Dan Morales
Attorney General-State of Texas
Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

RQ

Opinion Committee

Re: Ability to Transfer a Project of the Texas Turnpike Authority to Harris County

Dear General Morales:

The Texas Turnpike Authority (the "Authority") is an agency of the State of Texas authorized and existing pursuant to Tex. Rev. Civ. Stat. Ann. art. 6674v, (Vernon) et seq. (the "Turnpike Act"), which engages in the construction, operation, and maintenance of turnpike projects which are defined in the Turnpike Act Sec. 4.:

"(c) The word "Project" or the words "Turnpike Project" shall mean any express highway or turnpike which the Authority may at any time determine to construct under the provisions of this Act, including its facilities to relieve traffic congestion and to promote safety, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project; . . ."

Activities of the Authority undertaken by it under the Turnpike Act by law are deemed and held to be essential governmental functions of the State. Turnpike Act Sec. 3. There is no specific authority in the Turnpike Act for the Authority to convey a Turnpike Project.

MEMBERS: LUTHER G. JONES, JR., CHAIRMAN, CORPUS CHRISTI • CHARLES R. MATTHEWS, VICE CHAIRMAN, GARLAND
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In 1978, in order to finance construction of the Houston Ship Channel Bridge, a Turnpike Project (as above defined) located in Harris County, Texas (the "HSCB Turnpike Project"), the Authority issued the Texas Turnpike Authority Houston Ship Channel Bridge Revenue Bonds, Series 1978, in the principle amount of \$102,000,000.00 (the "1989 Bonds"). The construction of the HSCB Turnpike Project was completed and the facility was opened to traffic on May 6, 1982; it is a portion of a proposed outer belt around Houston designated as Beltway-8. Because of revenue shortfalls experienced in the early years, in 1985, to prevent a bond default, the Authority issued the Houston Ship Channel Bridge Junior Lien Revenue Refunding Bonds, Series 1985, in the principle amount of \$27,927,229.20 (the "1985 Bonds").

Recently, the Authority and Harris County have discussed the potential for Harris County or a transportation corporation created thereby pursuant to Tex. Rev. Civ. Stat. Ann. art. 15281, (Vernon), (the "transportation corporation"), to acquire ownership of the HSCB Turnpike Project from the Authority. It is anticipated that Harris County or the transportation corporation would issue its bonds secured by future toll revenues from the HSCB Turnpike Project, and use the proceeds to purchase the HSCB Turnpike Project from the Authority which would simultaneously use such sale proceeds to retire or to defease all existing outstanding Authority 1978 Bonds and 1985 Bonds. Their retirement and defeasance would be undertaken pursuant to the proceedings authorizing the original issuance of the Authority 1978 Bonds and 1985 Bonds and Tex. Rev. Civ. Stat. Ann. art. 717k, Section 7A (Vernon).

Section 19 of the Turnpike Act states:

"Sec. 19. When all bonds issued under the provisions of this Act in connection with any Turnpike Project, and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof or for the redemption thereof, shall have been set aside in trust for the benefit of the bondholders, such Project, if then in good condition and repair to the satisfaction of the State Highway Commission, shall become part of the State Highway Commission and shall thereafter be maintained by the State Highway Commission, free of tolls. . ."

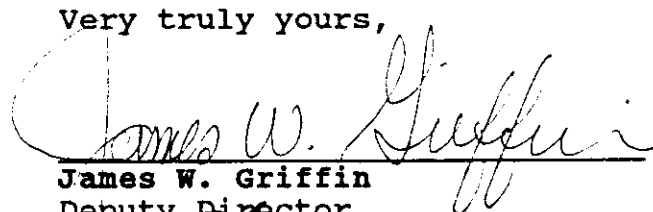
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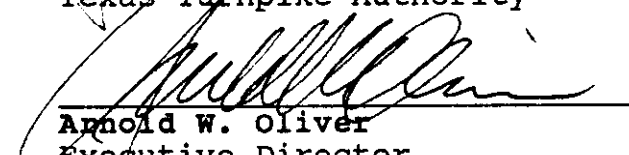
The above creates two questions of law which the Texas Turnpike Authority by resolution of its Board of Directors now certifies to the Attorney General of the State of Texas and make request for a written opinion pursuant to Acts 1987, Ch. 147, Section 1, concerning the following questions:

1. Can the Authority, pursuant to the Turnpike Act, legally sell or transfer the HSCB Turnpike Project to Harris County or a turnpike corporation created by Harris County; and
2. Will the payment or defeasance of all the outstanding 1978 Bonds and 1985 Bonds and the interest thereon require that under § 19 of the Turnpike Act the HSCB Turnpike Project then become part of the Texas Department of Transportation and thereafter be maintained free of tolls?

It is critically important to the Authority and the Texas Department of Transportation that these issues be addressed as expeditiously as possible. Therefore, it is urgently requested that the opinion above requested be issued within thirty days.

Very truly yours,


James W. Griffin
Deputy Director
Texas Turnpike Authority


Arnold W. Oliver
Executive Director
Texas Dept. of Transportation